

# EMPLOYMENT UPDATE

April 2009



*Welcome to the second edition of CFR's Employment Update. The objective of this publication is to provide our clients and contacts within the employment sector with a user friendly reference guide to any interesting case law and or legislative developments within the employment law arena.*

*In this issue, we focus on the recent Budget, a recent case on TUPE illustrating that lawyers can get caught out as well as anyone, protection for temporary workers and a significant EAT decision concerning staff on notice. We hope you find this useful and would be delighted to receive your feedback thoughts or comments.*

Michael Black, Employment Partner

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## THE BUDGET

Alastair Darling announced during the Budget that the maximum of a week's pay for statutory redundancy payment purposes will increase to £380 and the maximum statutory redundancy payment will thus increase to £11,400. It appears that the change will take effect in October. This follows the increase from £330 to £350 for a "week's pay" effective on 16 February 2009 which applies not just to redundancy payments but also to the limit on the compensatory award for unfair dismissal which increased from £63,000 to £66,200. The Chancellor has only increased the redundancy payment and the compensatory award remains at £350 for a week's pay.

The creation of the new 50% tax rate on incomes above £150k (effectively 64.8% when the national insurance rate is included) together with other onerous changes for higher earners to personal allowances and pension relief arrangements will inevitably lead to a renewed focus on tax favoured employee incentives such as share schemes and salary sacrifice plans. Many companies will no doubt consider reviewing their remuneration strategy in light of the budget and, there may well be increased focus on capital based remuneration methods such as share schemes to help attract and retain key staff.

If you fall into this category, please contact us to discuss the options available.

## CONTRACTUAL FORCE OF MAKING STAFF ON NOTICE TAKE HOLIDAYS

In *Industrial & Commercial Maintenance v Briffa* the English Appeal Tribunal held that the contract of employment could specify the procedure for the notice period, allowing employers to require that an employee working their notice period must take any accrued annual leave. The EAT ruled that the relevant provision of the Working Time Regulations could be varied by "relevant agreement". Tribunals in Northern Ireland are not bound by decisions of the EAT but the case will be of persuasive authority to Tribunals in this jurisdiction. Employers should check whether their employees' contracts stipulate that employees must use up their leave entitlement during their notice period.

*Please note: The content of this newsletter is for information purposes only. Further advice should be sought from a professional advisor before any action is taken.*

## TUPE AND TENDERS

Imagine your firm has just been successful following a tender to a major new client. Great news but what about the impact of TUPE?

In a recent English case, *Royden v Barnett's Solicitors*, two employees of Lees Lloyd Whitely (LLW) were deemed to have TUPE transferred to Barnett's, a law firm who won a tender with Britannia Building Society (BBS) for services which had previously been provided by LLW. This was by virtue of the service provision change enshrined in TUPE 2006 Regulations.

The LLW staff involved on the BBS contract worked at Birkenhead, but after the transfer the relevant employees would have been required to work at Barnett's' Southport office. The Tribunal held that due to the location of the Claimants' residences, it was a substantial change to their working conditions which was to their material detriment. The employees were allowed to treat the contract as having been terminated and as having been dismissed by the employer. Although the requirement that the Claimants work in Southport was for Economic Technical and Organisational (ETO) reasons, this requirement was not intended to bring about a reduction in manpower, i.e., the second limb of the ETO defence was not satisfied. Therefore, the dismissals in connection with the transfer were unfair.

The Tribunal decided that Barnett's had unfairly dismissed two of the six Claimants and that they had failed to comply with their duty to consult the two Claimants in connection with the transfer.

The other four claims failed as the employees were not 'assigned to the transfer' and so did not transfer. As a guide, if an employee cannot show that they spend more than 50% of their time on one particular client, then it will be almost impossible to claim under TUPE.

## RIGHTS FOR TEMPS

The *EU Temporary Agency Workers Directive* came into force towards the end of last year giving temporary workers the right to equal treatment on basic employment conditions such as pay, holiday and working hours compared with permanent employees. The Directive allows the UK to put into law the agreement between the CBI and the TUC that there should be a 12 week qualifying period for agency workers' equal treatment. The Government has said it would legislate on this matter this year but many employer organisations and recruitment agencies are urging it to make full use of the 3 year implementation period allowed under the Directive. While the date of the new law remains unclear, what is certain is that hiring temporary staff will become more expensive when temps are placed in longer term positions.

## ...STOP PRESS...STOP PRESS...

The Government has just confirmed that the opt-out from the Working Time Directive enabling workers to work in excess of 48 hours per week will remain in place despite attempts by Euro MPs to remove it.

## AND FINALLY

April Fools day earlier this month caught out a few employment lawyers who were advised by an email from an English firm of solicitors that the Government was launching a consultation on people with ginger hair. The extension of equality laws to include "gingerism" was being championed allegedly by former Labour Leader Neill Kinnock. Lobbyists were said to be pushing for the name of Ginger nut biscuits to be changed! Thankfully, it soon became clear that this was a red herring (pardon the pun!).

## The Employment Team

Please do not hesitate to contact any member of our Employment Team to discuss the Employment Update or any other employment law/HR matter.



### Michael Black Employment Partner

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Michael has a wealth of expertise regarding employment and discrimination law, working with both the private and public sectors. The advice he provides ranges from all aspects of discrimination law, equal pay, breach of contract, restraint of trade and employee relations through to unfair dismissal, disciplinary issues, redundancy, executive severance packages, health and safety, TUPE, data protection and employment aspects of commercial transactions.



### Aisling Byrne Associate Solicitor

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Aisling joined our Employment Unit in 2001 and now handles wide-ranging employment and discrimination cases. Her approach has achieved successful conclusions and fulsome praise from clients representing both the public and private sector. Phrases like 'professional support and guidance', 'good piece of work which clarified our thinking', 'quick turnaround time' show that Aisling's style gets results.



### Claire O'Kane Solicitor

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Claire advises clients on a variety of Employment and Equality issues, both contentious and non contentious, including employment contracts and policies, dismissals and redundancies, unlawful discrimination and the Working Time Regulations. Claire also liaises with the Corporate department to assist with employment related matters in the acquisition and disposal of companies.

For further details on our Employment practice please see our website [www.cfrlaw.co.uk](http://www.cfrlaw.co.uk)